

REMARKS

The Applicant would like to thank Examiner Mai for the courtesy of an interview on August 18, 2009. The undersigned representative discussed with Examiner Mai the fact that only two of the references from the International Search Report (“ISR”) in PCT/AU2004/001296, mailed on October 26, 2004, were listed on a PTO-892 form and that the Applicant would like to insure that the remaining references from that ISR will be listed on the face of the patent expected to issue from this application. Examiner Mai suggested that the Applicant file a Rule 312 Amendment in order to address this.

Accordingly, the Applicant respectfully submits this Amendment in accordance with 37 C.F.R. § 1.312 and MPEP § 714.16.

MPEP § 714.16 states:

[T]he amendment of an application broadly encompasses any change in the file record of the application. Accordingly, the following are examples of "amendments" by applicant after allowance which must comply with 37 CFR 1.312:

- (A) an amendment to the specification,
- (B) a change in the drawings,
- (C) an amendment to the claims,
- (D) a change in the inventorship,
- (E) the submission of prior art,
- (F) a petition to correct the spelling of an inventor's name,
- (G) petition to change the order of the names of the inventors,

etc.

MPEP § 714.16. In accordance with MPEP § 714.16 and the interview with Examiner Mai on August 18, 2009, the Applicant respectfully submits that this Rule 312 Amendment is proper for insuring that the remaining references from that ISR get listed on the face of the patent to issue from this application.

The basis for this Rule 312 Amendment is as follows.

This application is a U.S. National Stage application of PCT application PCT/AU2004/001296. In that PCT application, an International Search Report (“ISR”) was mailed on October 26, 2004, and an International Preliminary Report on Patentability (or International Preliminary Examination, “IPE”) was mailed on December 21, 2005. Copies of the ISR and ISE were submitted concurrently with this U.S. National Stage application. See Notice

of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.495, mailed December 6, 2006.

The ISR and ISE listed the following six (6) references:

- (1) JP 2002191623 A (ASO INTERNATIONAL);
- (2) US 4,299,568 (CROWLEY);
- (3) US 3,967,379 (BERGERSEN);
- (4) US 4,253,828 (COLES et al);
- (5) US 5,376,001 (TEPPER); and
- (6) US 5,607,300 (TEPPER).

In the Image File Wrapper (“IFW”) available in PAIR, the “Examiner’s search and strategy results” (Mail Room Date 7/29/09) lists all six (6) of the above references, indicating that the references from the ISR and ISE were indeed considered by the Examiner during the U.S. National Stage. This is in accordance with the desired procedure, as indicated in the MPEP. See MPEP § 1893.03(g) (“It is desirable for the U.S. examiner to consider the documents cited in the international application when examining the U.S. national stage application … .”).

While the “Examiner’s search and strategy results” indicates that all six (6) references were considered, only two of those references—namely, US 4,299,568 (CROWLEY) and US 5,607,300 (TEPPER)—were listed on a PTO-892 form. See PTO-892 form attached to the 4/14/09 Office Action.

The Applicant respectfully requests that the Examiner indicate that the remaining four (4) references cited in the ISR have also been considered on the accompanying Form PTO/SB/08a, to insure that all of the references from the ISR are listed on the patent expected to issue from this application. Accordingly, the Applicant respectfully submits the accompanying Form PTO/SB/08a, along with a copy of JP 2002191623 A (ASO INTERNATIONAL).

The filing of the accompanying Form PTO/SB/08a shall not be construed as an admission that the information cited is prior art, nor that it is considered to be material to patentability as defined in 37 C.F.R. § 1.56(b).

Because all of the references listed in the attached Form PTO/SB/08a were listed in the ISR that was issued in PCT application PCT/AU2004/001296, because that ISR accompanied entry of this application into the U.S. National Stage, and because it appears from the “Examiner’s search and strategy results” (Mail Room Date 7/29/09) that all of these references have already been considered by the Examiner, it is believed that no certification or fee is

necessary. Nevertheless, should any additional fees be due, authorization is hereby given to charge any additional fees due, or to credit any overpayment, to Deposit Account 11-0600.

Should any issue arise, the Examiner is invited and encouraged to contact the undersigned at the number given below.

Respectfully submitted,

Date: August 19, 2009

/Douglas E. Ringel/

Douglas E. Ringel

Registration No. 34,416

Kenyon & Kenyon LLP
1500 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 220-4200
Facsimile: (202) 220-4201

Customer Number 23838